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Prohibition, Excise & Registration Department

ORDER

The 26th February 2018

No. 12/muk-50/17-661—The SCI India Ltd., Rajaun, Banka, (Grain based Distillery, manufacturer of industrial alcohol) has applied for renewal of license for manufacturing industrial alcohol (ENA) from Grain for the year 2017-18. The applicant has applied for the renewal of the said license in the light of the judgment passed on 03.05.2017 by the Hon'ble High Court of Patna in the matter of SCI India Ltd Vs State of Bihar; CWJC No.1713 of 2017 and others and in the light of the interim order passed by the Hon'ble Supreme Court of India in the matter of SLP (CIVIL)-16828-16831/2017; State of Bihar Vs Bihar Distillers and Bottlers Pvt. Ltd and Others.

2. The Hon'ble High Court of Patna in the matter of SCI India Ltd Vs State of Bihar; CWJC No.1713 of 2017 and others observed in the para 68 of the judgment dated 03.05.2017 that *“Once from the materials available on record and a complete reading of the IDR Act, it is clear that ENA, an industrial alcohol, not fit for human consumption, is a material or item covered under Entry 52 of Schedule I, the State Government is denuded of its power to prohibit its manufacturer. The only power available to the State Government as detailed and laid down by the Constitution Bench in the case of Synthetics and Chemicals Ltd. (supra) is that the State may lay down regulations to ensure that non-potable alcohol, like industrial alcohol is not diverted or misused as a substitute for potable alcohol. The State cannot be permitted to do something, which is not permissible in law, and in the garb of regulating in furtherance to the policy of prohibition, this Court cannot permit the State to enact a law totally prohibiting the manufacturer of an item or a product, which is within the exclusive domain of the Central Government. This is not permissible and to that extent, relief has to be granted to the petitioners.”*

3. The Hon'ble High Court of Patna further observed in para 71 that *“In the backdrop of the aforesaid findings, the act of the State Government in issuing the Notification dated 24th January, 2017 and the provisions contained therein with regard to denying renewal of license so*

far as the production of ENA from grain based industries are concerned, to that extent and limited to the denial of license or its renewal to production of ENA has to be quashed and is, accordingly, quashed. Remaining part of the Notification which does not affect the right of the petitioners to carry on production and manufacturing of ENA need not be struck down by this Court.”

4. In para 72 of the aforesaid judgment the Hon’ble High Court of Patna has observed that “The impugned legislation was thereafter being tried to be supported or legitimized by pointing out that it has been implemented in furtherance to the food grains policy of the Union, to prevent misuse of the ENA, which is potential of being converted into potable liquor. It is, in fact, a preventive measure in furtherance to the prohibition policy as if this is not done, the entire prohibition policy of the State may be adversely affected. These submissions may give justifiable reasonableness for the act of the State or may be good enough for substantially holding that the State has acted in a reasonable manner, but even for doing so, the State has to function within the four corners of the Constitutional powers available to it in the matter of legislative competence and once we have held on due analysis of various factors that the State of Bihar lacks legislative competence to do so, we cannot uphold the action on the principles of upholding certain policies of the Union or steps taken in furtherance to bringing into effect the prohibition policy in the State of Bihar in its letter and spirit and to prevent misuse of any product, which may adversely affect the prohibition policy. If the State feels that they have to prevent misuse of the product from being converted to a potable alcohol and thereby adversely affecting the prohibition policy in the State, the State under the law and the Constitution can use preventive and deterrent methods, but in the garb of prevention, a complete stoppage of the industry is not permissible.”

5. Against the judgment dated 03.05.2017 passed by Hon’ble High Court of Patna in the matter of CWJC 1713 of 2017, the State Government has preferred SLP(C) 16828-16831/2017 before the Supreme Court of India wherein the Hon’ble Supreme Court has passed the following interim order on 14.07.2017 :

“In the meantime, as undertaken by the learned Counsel for the Respondents, they shall neither manufacture the potable alcohol, nor convert the industrial alcohol to potable alcohol. Additionally, they will not submit any application for renewal of potable alcohol, that does not debar them to apply for renewal of license for industrial alcohol.”

6. Since the Hon’ble High Court in the aforesaid judgment has held that the State Government is denuded of its power to prohibit the manufacturer of industrial alcohol . The only power available to the State Government as detailed and laid down by the Constitution Bench in the case of Synthetics and Chemicals Ltd. (supra) is that the State may lay down regulations to ensure that non-potable alcohol, like industrial alcohol is not diverted or misused as a substitute for potable alcohol.

7. However, in compliance of the judgment passed by the Hon’ble High Court of Patna in the matter of CWJC 1737/2017 and Interim order passed by the Hon’ble Supreme Court of India on 14.07.2017 in the matter of SLP(CIVIL)-16828-16831/2017; State of Bihar Vs Bihar Distillers and Bottlers Pvt. Ltd and Others and orders passed in MJC No. 3420 of 2017; M/s Globus Spirits Limited Vs State of Bihar, in order to prevent the misuse of industrial alcohol for consumption as potable alcohol, it is hereby directed that **if the applicant manufacture industrial alcohol (ENA)** within the State Of Bihar, then such manufacturer of industrial alcohol (ENA) will be subject to the following conditions and will have to abide by the same:-

- (i) The manufacturer company/distillery shall not act in any manner prejudicial to the interest of the Government policy.
- (ii) The distillery shall neither manufacture the potable alcohol nor convert the industrial alcohol (ENA) to potable alcohol.
- (iii) The Industrial alcohol (ENA) if produced shall entirely be exported outside the State Of Bihar.
- (iv) All the consignments, be it raw material or the final product entering in and exiting out of the distillery premises, shall be transported in digitally locked GPS enabled containers.

- (v) The Commissioner shall appoint such officers and establishment as he thinks fit to the charge of the distillery for inspection and regulation in view of the conditions laid herein as well as the provisions of the Bihar Prohibition and Excise Act, 2016 and rules made there under.
- (vi) The operation of the distillery shall be under CCTV surveillance round the clock and the data of the same will be stored so that the same can be viewed by the inspecting authority as and when required.
- (vii) The manufacturer company shall be bound by all general or special order which may be issued by the Excise Commissioner from time to time.
- (viii) The industrial alcohol if produced by manufacturer company/Distillery shall be subject to periodical analysis by or under the orders of Collector/Deputy Commissioner or the Excise Commissioner, and the manufacturer company shall take steps to remedy any defects in the quality thereof which the Excise Commissioner may consider material.
- (ix) The manufacturer company shall be bound to make such arrangements as may be prescribed in writing by the Collector/Deputy Commissioner for the disposal of effluents, waste matter and refuse and shall be bound to comply with the provisions contained in Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.
- (x) The Commissioner shall appoint such officers and establishment as he thinks fit to the charge of the distillery for the inspection and regulation of the conditions laid herein as well as the provisions of the Bihar Prohibition and Excise Act, 2016 and rules made there under.
- (xi) The Government shall not be held responsible for the destruction, loss or damage by fire, theft or any other cause whatsoever, occurring to any industrial alcohol stored in the distillery or in gauging, weighment or proof. In case of fire or other accident the officer in charge of the distillery shall immediately attend to open it at any hour by day or night.
- (xii) The distiller shall keep accurate and regular daily accounts showing
 - (a) The quantity and description of materials used.
 - (b) quantity of wash and Industrial alcohol manufactured.
 - (c) quantity of wash used.
 - (d) quantity of Industrial alcohol passed out
 - (e) quantities of wash and Industrial alcohol in store.
 - (f) quantities of by product like impure spirit in store.
 - (g) quantity of denaturants used and in store.
- (xiii) The manufacturer company shall be bound by the undertaking tendered before the Hon'ble Supreme Court and recorded in the order dated 14.07.2017 in the SLP (C) 16828-16831/2017.
- (xiv) The breach, non-performance or non-observance by the manufacturer company/distillery or his agent of any of the conditions specified herein or any provision of the Bihar Prohibition and Excise Act, 2016 or rules framed thereunder, so far as they relate to the manufacture/production of Industrial alcohol (ENA), shall be liable for penal action as per the provisions of the Bihar Prohibition and Excise Act, 2016 .

By Order,
(Sd) **Illegible**,
Excise Commissioner Bihar.

COUNTER AGREEMENT

I.....the above named manufacturer company/distillery for myself and my heirs, legal representatives and assignees, hereby agree to all the terms and conditions hereinbefore written and expressed.

Dated.....20.....

Witnesses :-

Signature

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